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SECTION III—REMARKS

This amendment is submitted in response to the final Office Action mailed October 5, 2006. Claims 29, 33 and 40 are amended and claims 29-45 remain pending in the application. Applicants respectfully request reconsideration of the application and allowance of all pending claims in view of the above amendments and the following remarks.

Claim Objections

The Examiner objected to claim 29 because the claim, at line 2, recites "an oscillator" instead of "the oscillator." Applicants have amended the claims so that line 2 now recites --forming the oscillator on a substrate, the oscillator comprising: --. Applicants respectfully submit that this amendment overcomes the Examiner's objection.

Rejections Under 35 U.S.C. § 102

The Examiner rejected claims 29-33 and 40-42 as anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 4,080,696 to Shimatsu ("*Shimatsu*"). Applicants respectfully traverse the Examiner's rejections. A claim is anticipated only if each and every element, as set forth in the claim, is found in a single prior-art reference. MPEP § 2131; *Verdegaal Bros. v. Union Oil of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). For at least the reasons explained below, *Shitmatsu* cannot anticipate these claims because it does not disclose every element and limitation recited therein.

Claim 29, as amended, recites a process combination for tuning an oscillator including:

forming the oscillator on a substrate, the oscillator comprising:

at least one pedestal formed on the substrate,

a vibrating portion of the oscillator supported by the at least one pedestal such that the vibrating portion is not in contact with the substrate,

a drive electrode positioned proximate to, but not in contact with, the vibrating portion; and

a plurality of spaced-apart stacks on one side of the vibrating portion;

determining a first resonant frequency of the oscillator; and

adjusting the resonant frequency of the oscillator by removing at least one of the plurality of spaced-apart stacks on the vibrating portion.

(italics added). *Shimatsu* does not disclose, teach or suggest a combination including the recited limitations. As can be seen in Figure 2, *Shimatsu* teaches a method of making a piezoelectric vibrator where a film electrode 3 is deposited *directly* on a surface of vibrator 2. Thus, *Shimatsu* does not disclose, teach or suggest a combination with an oscillator including "a drive electrode positioned

proximate to, but not in contact with, the vibrating portion,” as in amended claim 29. Applicants submit that claim 29 is therefore in condition for allowance and respectfully request withdrawal of the rejection and allowance of the claim.

Regarding claims 30-32, if an independent claim is allowable, then any claim depending therefrom is also allowable. *See generally* MPEP § 2143.03; *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). As discussed above, claim 29 is in condition for allowance. Applicants submit that claims 30-32 are therefore allowable by virtue of their dependence on an allowable independent claim, as well as by virtue of the features recited therein. Applicants therefore respectfully request withdrawal of the rejections and allowance of these claims.

Claim 40, as amended, recites a process combination that includes:

providing an oscillator including:

at least one pedestal formed on a substrate,

a vibrating portion of the oscillator supported by the at least one pedestal such that the vibrating portion is not in contact with the substrate,

one or more structures on one side of the vibrating portion, and

a drive electrode positioned proximate to, but not in contact with, the vibrating portion;

determining a first resonant frequency of the oscillator; and

adjusting the resonant frequency of the oscillator by altering the structures on the vibrating portion.

(italics added). By analogy to the discussion related to claim 29, Applicants submit that *Shimatsu* fails to disclose “a drive electrode positioned proximate to, but not in contact with, the vibrating portion,” as in amended claim 40. Applicants submit that claim 40 is therefore allowable and respectfully request withdrawal of the rejection and allowance of the claim.

Regarding claims 41-42, if an independent claim is allowable, then any claim depending therefrom is also allowable. *See generally* MPEP § 2143.03; *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). As discussed above, claim 40 is in condition for allowance. Applicants submit that claims 41-42 are therefore allowable by virtue of their dependence on an allowable independent claim, as well as by virtue of the features recited therein. Applicants therefore respectfully request withdrawal of the rejections and allowance of these claims.

Double Patenting Rejection

The Examiner provisionally rejected claims 29, 40 and 41 on the ground of non-statutory obviousness-type double patenting. According to the Examiner,

these claims are unpatentable over claim 29 of co-pending Application No. 09/738,118 in view of *Shimatsu*. The Examiner states that although the conflicting claims are not identical, they are not patentable distinct from each other because it is clear that all of the steps of claim 29 of the co-pending application are found in claims 29, 40 and 41 of the instant application.

Applicants respectfully traverse the rejection. Claim 29 of co-pending Application No. 09/738,118 does not recite a combination that includes "a drive electrode positioned proximate to, but not in contact with, the vibrating portion," as in amended claims 29 and 40 of the present application. As discussed above, *Shimatsu* also fails to disclose a combination including the above limitations. Thus, even if combined, *Shimatsu* and claim 29 of co-pending Application No. 09/738,118 would fail to teach or suggest all of the claim limitations of claims 29, 40 and 41 of the present application. Applicants submit that claims 29, 40 and 41 therefore cannot be obvious in view of *Shimatsu* and claim 29 of the cited co-pending application and respectfully request withdrawal of the double-patenting rejection.

Conclusion

Given the above amendments and accompanying remarks, all claims pending in the application are in condition for allowance. If the undersigned attorney has overlooked a teaching in any of the cited references that is relevant to allowance of the claims, the Examiner is requested to specifically point out where

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such teaching may be found. Further, if there are any informalities or questions that can be addressed via telephone, the Examiner is encouraged to contact the undersigned attorney at (206) 292-8600.

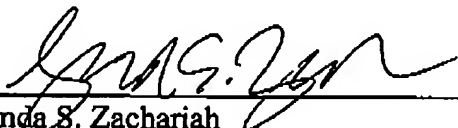
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Respectfully submitted,

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Date: 12.5.06


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Enclosures: Transmittal Letter, in duplicate